

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant(s): Barton et al.
Appl. No.: 10/691,806
Conf. No.: 6662
Filed: October 21, 2003
Title: APPARATUS AND METHOD FOR PROVIDING POINT OF PURCHASE
PRODUCTS
Art Unit: 3653
Examiner: J. Shapiro
Docket No.: 112703-294

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF

Sir:

I. INTRODUCTION

Appellants submit Appellants' Reply Brief in response to the Examiner's Answer dated October 16, 2007 pursuant to 37 C.F.R. § 41.41(a). Appellants respectfully submit the Examiner's Answer has failed to remedy the deficiencies with respect to the Final Office Action dated March 27, 2007 as noted in Appellants' Appeal Brief filed on July 12, 2007 for at least the reasons set forth below. Accordingly, Appellants respectfully request that the rejections of pending Claims 44-68, 76 and 102-111 be reversed.

II. THE REJECTION OF CLAIMS 62-64 UNDER 35 U.S.C. §102(b) SHOULD BE REVERSED BECAUSE TERRANOVA FAILS TO DISCLOSE OR SUGGEST EVERY ELEMENT OF THE CLAIMED INVENTION

Appellants respectfully request that the Board reverse the anticipation rejections of Claims 62-64 under 35 U.S.C. §102(b) because the Examiner has still failed to provide sufficient evidence that each and every limitation of the present claims is disclosed by *Terranova*. In this regard, the Examiner has failed to properly interpret the claim language and specifically the claim element “supplier.”

a. The Examiner has not properly interpreted the present claim language

Appellants respectfully disagree with the Examiner’s assertion that the term “supplier” as used in the present claims and described in the specification can be construed as an owner of *Terranova*’s device. See, Examiner’s Answer, page 12, lines 15-18. The Examiner alleges that “[n]owhere in Independent Claim 62, or Claims 63-64, is there a limitation mentioned that requires the supplier to be a ‘third party.’ Note that an owner of *Terranova*’s device (18) can be construed to also be a supplier of the product, i.e., the fuel, that is dispensed from the point of purchase device, i.e., the fuel dispenser. Such an owner, who is also the supplier, and who makes profits from the sale of the fuel, is construed to also be paying himself a fee in the form of profits from the sale of the fuel.” See, Examiner’s Answer, page 12, lines 15-20. Appellants respectfully disagree and submit that the Examiner has not properly interpreted the present claim language in accordance with the teachings of the Federal Circuit.

In part, the propriety of this rejection lies in the interpretation of the claim language “supplier.” To properly interpret claim language, the Federal Circuit has held that claims must be read in view of the specification, of which they are a part. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995). Moreover, intrinsic evidence in the form of the patent specification should guide claim construction. Along these lines, the Federal Circuit recently reinforced the importance of the specification when interpreting claim language:

[t]he claims, of course, do not stand alone. Rather, they are part of
“a fully integrated written instrument,” *Markman*, 52 F.3d at 978,

consisting principally of a specification that concludes with the claims. For that reason, claims "must be read in view of the specification, of which they are a part." *Id.* at 979. As we stated in *Vitronics*, the specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term."

Phillips v. AWH Corp., 415 F.3d 1303, 1315 (Fed. Cir. 2005) (emphasis added). Therefore, although the term "supplier" is not explicitly defined in the specification, the best source of information to determine what is meant by "supplier" is the specification, which must be taken into consideration when defining claim language. It is axiomatic that the Appellants' use of a term controls how that term is interpreted.

In contrast to the Examiner's assertion that the term "supplier" can be construed simply to mean the owner of the point of purchase device, the MPEP clearly states that "words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification." *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (emphasis added). Appellants respectfully submit that the term "supplier" as used in the specification is clearly meant to be interpreted as a third party supplier, and not as an owner of the point of purchase device, as suggested by the Examiner.

For example, throughout the specification Appellants repeatedly discuss how retail outlets having point of purchase devices can work with suppliers to optimize the throughput of the present invention and how suppliers, or "point of purchase product sellers," pay retail outlets or manufacturers in exchange for the ability to sell their product in a point of purchase device. See, e.g., specification, page 17, lines 9-18; page 28, lines 3-22; page 37, line 23-page 38, line 13. Further, the specification clearly illustrates a relationship between either a point of purchase product seller and a retail outlet or between a point of purchase product seller and a device manufacturer. For example, the specification states that:

[t]he point of purchase product seller pays a lump-sum or alternatively a plurality of continuous royalty payments to the retail outlets in exchange for the right to stock the seller's product. In this manner, the retail outlet recoups some of its out-of-pocket cost for the devices. In another embodiment, the point of purchase product seller pays continuous royalty payments or more likely a lump-sum payment to the device manufacturer. In this manner, the manufacturer can sell the device at a lower price (or the product

seller pays part of the normal price) so that the retail outlet pays less up front. Here, the retail outlet makes a lower up-front payment, but the product seller likely owns rather than leases at least part of the stocking space.

See, specification, at page 38, lines 3-13 (emphasis added). Therefore, even though the term “supplier” is not explicitly defined in the specification, it is axiomatic that the Appellants’ use of a term controls how that term is interpreted. As clearly indicated by the manner in which the term “supplier” is used in the specification, it is clear that Appellant’s intended the term to comprise a third party supplier who pays a point of purchase device owner in a *quid pro quo* exchange for the supplier’s ability to sell its product in the point of purchase device.

Although limitations in the specification cannot be incorporated into the claims, Appellants respectfully submit that the specification must be considered when determining how Appellants intended the term “supplier” to be interpreted. As such, Appellants respectfully submit that, in contrast to the Examiner’s assertion, the term “supplier” does, in fact, mean that a third party exchanges money for the ability to sell its product. Moreover, Appellants respectfully submit that one having ordinary skill in the art would not use the term “supplier” or the phrase “in exchange for the right to” when describing a point of purchase device owner’s incorporation of his own product into his own device. Instead, one of ordinary skill in the art would recognize that a third party supplier would offer money “in exchange for the right to” sell its product in the point of purchase device owned by another. A “supplier,” then, must refer to a third party supplier who engages in a *quid pro quo* exchange with, for example, the point of purchase device owner.

It is only by disregarding the proper standards for claim interpretation that the Examiner can reject the claimed invention.

b. Terranova fails to disclose or suggest every element of the present claims

As Appellants have demonstrated above, and in previously filed correspondences, the term “supplier” should be interpreted to comprise a third party supplier who engages in a *quid pro quo* exchange with, for example, the point of purchase device owner. Appellants’ instant Claim 62 recites, in part, a method of generating revenue comprising: providing a point of purchase device that is coupled to the retail purchasing device, the point of purchase device

designed to dispense a product at the point of purchase; and obtaining a fee paid from a supplier of the product in exchange for allowing the product to be dispensed from the point of purchase device. In this manner, for example, a retail outlet “may recoup some of the out-of-pocket costs” for the use of a point of purchase device. See, specification, page 38, lines 3-13. This method, then, helps to fund the use of the devices by retail outlets. In contrast, Applicants respectfully submit that *Terranova* is deficient with respect to the present claims.

Appellants respectfully disagree with the Examiner’s assertion that “an owner of *Terranova*’s device (18) can be construed to also be a supplier of the product, i.e., the fuel, that is dispensed from the point of purchase device, i.e., the fuel dispenser. Such an owner, who is also the supplier, and who makes profits from the sale of the fuel, is construed to also be paying himself a fee in the form of profits from the sale of the fuel.” See, Examiner’s Answer, page 12, lines 16-20. As briefly mentioned above, the claimed step of obtaining a fee paid from a supplier of the product in exchange for allowing the product to be dispensed from the point of purchase device as required, in part, by Claim 62 allows for a *quid pro quo* for some third party for putting the product in the point of purchase device is providing a fee. In contrast, Appellants respectfully submit that *Terranova* fails to disclose or suggest obtaining a fee paid from a supplier of the product in exchange for allowing the product to be dispensed from the point of purchase device, as required, in part, by independent Claim 62. In fact, the claimed step of obtaining a fee paid from a supplier of the product in exchange for allowing the product to be dispensed from the point of purchase device is nowhere disclosed or even suggested by *Terranova*.

As such, Appellants respectfully submit that obtaining a fee from a supplier for allowing the supplier to sell a product in the point of purchase device as required, in part, by Claim 62, and which helps to fund the use of the point of purchase device, is not anticipated by obtaining profits for the sale of fuel as described in *Terranova*. Such a *quid pro quo* exchange between parties for the benefit of both parties is not at all disclosed or even suggested by an owner/supplier who makes profits on the sale of the product that the owner/supplier is selling. Moreover, common sense would suggest that such an owner/supplier would not “obtain[] a fee” from one’s self “in exchange for allowing [one’s] product to be dispensed’ from one’s own device. Therefore, the very language of independent Claim 62 suggests that the Examiner’s rationale for the rejection is improper.

For at least the reasons discussed above, *Terranova* fails to teach, suggest, or even disclose independent Claim 62 and Claims 63-64 that depend therefrom, and thus, fails to anticipate the present claims. Accordingly, Appellants respectfully request that the rejections of Claims 62-64 be reversed.

III. THE REJECTION OF CLAIMS 44-68, 76 AND 102-111 UNDER 35 U.S.C. § 103(a) SHOULD BE REVERSED BECAUSE THE EXAMINER HAS NOT ESTABLISHED A PRIMA FACIE CASE OF OBVIOUSNESS WITH RESPECT TO THE CITED REFERENCE

Appellants respectfully request that the Board reverse the rejections of Claims 44-68, 76 and 102-111 under 35 U.S.C. §103(a) because there exists no reason why the skilled artisan would have combined the cited references to arrive at the presently claimed subject matter. However, even if combinable, the cited references fail to teach or suggest every element of the claimed invention.

- a. The skilled artisan would not combine *Bustos*, *Walter* and *Terranova* to arrive at the present claims

Appellants respectfully submit that the skilled artisan would have no reason to combine or modify the cited references because *Bustos* teaches away from the claimed invention and there exists no reason for the skilled artisan to combine the references. The principal reference relied upon by the Examiner is *Bustos*. This reference relates entirely to a product vending system utilizing a pneumatic product delivery. In this regard, as illustrated in Figure 1, the product to be dispensed is stored at a remote location away from the actual dispensing device, which teaches away from the claimed invention. For example, *Bustos* specifically states:

[a] primary object of the present invention is providing a method and system for merchandising products to customer's situations and at locations where it has previously been inconvenient or expensive to do so. It is a particular object of the present invention to vend food and other products to consumers at locations at which it may be impractical to store the products and to do so in a way

that minimizes the amount of human labor required to sell and deliver the product to the customer.

Bustos, column 3, lines 43-52. *Bustos* actually teaches one having ordinary skill in the art away from the claimed invention. First, the whole point of *Bustos* is to store product remote from the dispensing device, checkout counter or similar area. This is to save space or because the product needs to be maintained at temperatures other than ambient temperatures. Thus, in contrast to the claimed invention, *Bustos* does not envision storing products proximate to the point of purchase but rather remote thereto. As a result, *Bustos* does not suggest this claimed element as it teaches away from same. Thus, the Examiner's alleged modification of *Bustos*, *Walter* and *Terranova* would prevent the *Bustos* apparatus from operating as intended. Consequently, the skilled artisan would have no reason to combine *Bustos*, *Walter* and *Terranova*. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984) (if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no motivation to make the proposed modification).

Moreover, *Bustos* is not concerned with the problem solved by Appellants' claimed invention. *Bustos* illustrates the supermarket prior to the advent of automated or self-scan checkouts. Therefore, *Bustos* is not concerned with providing a method for allowing point-of-purchase products to be dispensed and stored at self-scanning or other self-checkout counters to overcome the problems of limited shelf space for point-of-purchase products. Instead, point-of-purchase products are displayed in *Bustos* as they were prior to self-checkout devices. Consumers can peruse these displays while they wait for the clerk to check them out. Consequently, the issues facing Appellants were not a concern to *Bustos*. It is erroneous to utilize Appellants' recognition of a problem and its solution as a template to recreate the claimed invention. *Monarch Knitting Machinery Corp. v. Fukuhara Industrial Trading Comp., Ltd.*, 139 F.3d 1009 (Fed. Cir. 1998).

In response to Appellants above-described reasons as to why the skilled artisan would find no reason to combine the cited references, the Examiner merely asserts that "the recent decision rendered in *KSR* . . . forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness." See, Examiner's Answer, page 9, lines 1-3. Instead, Appellants respectfully submit that the Examiner is still required to articulate some "reasoning with some rational underpinning to support the legal conclusions of

obviousness.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). For example, in *KSR* the Supreme Court articulated the following standard with respect to obviousness:

[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See, *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness).

Id. Therefore, Appellants respectfully disagree with the Examiner’s statement that “the recent decision rendered in *KSR* . . . forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness.” See, Examiner’s Answer, page 9, lines 1-3. Instead, Appellants respectfully submit that the Examiner must sustain the obviousness rejection with “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” As such, Appellants respectfully submit that the skilled artisan would have no reason to combine or modify the cited references because *Bustos* teaches away from the claimed invention and there exists no reason for the skilled artisan to combine the references.

- b. *Bustos*, *Walter* and *Terranova* alone, or in combination, fail to disclose or suggest a number of presently claimed features

Appellants respectfully submit that, even if the combination is proper, the cited references are deficient with respect to the present claims because the cited references fail to disclose all of the claimed elements.

With respect to independent Claim 44, Appellants respectfully disagree with the Examiner’s statement that “[Appellants’] newly added claim limitations simply state ‘storing the product to be dispensed in the dispensing device.’” See, Examiner’s Answer, page 9, lines 9-10.

Instead, and in direct contrast to the Examiner's statement, Appellants respectfully submit that independent Claim 44 recites, in part, "allowing the consumer to select a product from a dispensing device located in juxtaposition to the automated checkout; storing the product to be dispensed in the dispensing device."

Regarding the Examiner's statement that "proximate," "remote," and "juxtaposition" are relative terms, Appellants submit that this is inapposite. They are antonyms, as is illustrated by the definitions provided by the Examiner in the Examiner's Answer at page 9, lines 14-18. As shown by the Examiner, "juxtaposition," as used by Appellants in independent Claim 44 means "the act or an instance of placing two or more things side by side." In contrast, "remote," as used by *Bustos*, means "far removed in space, time or relation." For the Examiner to disregard this distinction is to effectively destroy the ability of Appellants to even attempt to claim the method of Claim 44. Appellants respectfully submit that the Examiner's justification for the rejection demonstrates that it is not proper.

Moreover, the Examiner asserts that "even if it was construed that [the storage and dispensing units of the prior art] were not proximate, it would have been obvious to do so since the size of the conduit through which the items travel is a matter of design choice based on situational requirements." See, Examiner's Answer, page 10, lines 2-6. However, Appellants respectfully disagree with this statement. For example, and as demonstrated by Appellants' specification, two problems associated with automated purchasing machines are reduced floor space and reduced rack space. See, specification, page 2, lines 16-26. In order to solve the problem of reduced rack space, the prior art would teach a need for a point of purchase device having reduced floor space. In turn, a point of purchase device having reduced floor space may also require a storage unit located at a "remote" location away from an automated checkout. However, as described in the specification, Appellants are able to provide a point of purchase device that solves the problems of the prior art while still placing the dispensing device in juxtaposition to the automated checkout. Therefore, Appellants respectfully submit that one of ordinary skill in the art would not have found it obvious to position any dispensing device of the prior art in juxtaposition to an automated checkout.

Regarding Claims 48, 102, and 106-111, the Examiner alleges that *Terranova* discloses the use of a touch screen interface. See, Examiner's Answer, page 10, lines 7-8. However, Appellants respectfully submit that the alleged touch screen interface of *Terranova* is not a touch

screen as used by Appellants in Claims 48, 102 and 106-111. For example, the disclosure cited by the Examiner as illustrating this limitation merely discloses that “the dispenser 18 will include one or more types of displays, preferably one or more alpha-numeric displays 96 together with a high-resolution graphics display 100. The graphics display 100 will generally have an associated key pad 102 adjacent to the display or integrated with the display to provide a touch interface.” See, *Terranova*, col. 7, lines 24-30.

Appellants respectfully submit, however, that the touch interface of *Terranova* is not the same touch screen as used by Appellants in the present claims. For example, the touch screens of Appellants’ invention serve many functions. For example, the touch screen enables the consumer at any point during the self-scanning process to select one or more choices on the screen, the touch screen may display any suitable message that prompts the consumer to purchase a dispensable product, the touch screen may show the consumer the current total for the consumer’s selected items, and the touch screen may also display a “smart prompt” that changes with the changing selection of items by the consumer. See, specification, page 21, line 26-page 23, line 8. Moreover, the touch screen display may also be adapted to scroll through different products and display one or more products, as determined by the consumer. See, specification, page 18, line 17-page 19, line 10. In contrast, *Terranova*, as cited by the Examiner in the Examiner’s Answer, appears to disclose a static display wherein the consumer may only use the alpha-numeric display for basic functions. For example, *Terranova* discloses using a key pad to insert a secret code or other information to select a type of car wash. See, *Terranova*, col. 10, lines 37-39. Therefore, the very basic display and key pad of *Terranova* is distinguishable from the dynamic touch screen display of Appellants’ present invention.

Moreover, the Examiner fails to even address the remaining limitations for Claims 48, 102, and 106-111. Therefore, even if the Examiner is correct in alleging that a touch screen as used by Appellants is disclosed by *Terranova*, the cited references still fail to disclose or suggest other remaining limitations of the present claims as set for in Appellants’ Appeal Brief filed on July 12, 2007. Therefore, Appellants respectfully submit that the cited references fail to disclose each and every element of Claims 48, 102, and 106-111 and, therefore, fail to render the Claims obvious.

Regarding Claim 49, the Examiner alleges that “*Walter*, as admitted by Applicants, does disclose a customer prompt. Since this is in part what the teaching of *Walter* is used for, the fact

that it prompts for any product can be construed to include products located anywhere in the store, either at the point of purchase or far away therefrom.” See, Examiner’s Answer, page 10, lines 17-20. Appellants respectfully disagree with the Examiner’s statement because any prompting that is involved in *Walter* is distinguishable from the “prompting [of a] consumer to purchase a product from a dispensing device” as used by Appellants in independent Claim 49. For example, Appellants’ specification includes examples of prompts wherein the prompt queries the consumer as to whether the consumer would like to purchase a point of sale product. See, e.g., specification, page 22, lines 7-14. In contrast, any prompt used by *Walter* queries the consumer, for example, as to how the consumer would like to pay for a product and if the consumer would like cash back. See, *Walter*, col. 9, line 66-col. 12, line 10. Therefore, while *Walter* may prompt a consumer, as previously noted by Appellants, the prompt does not prompt a consumer to purchase a product from a dispensing device as required, in part, by Claim 49. Moreover, Appellants note, and the Examiner failed to address, the fact that *Walter* discloses the very problem that Appellants’ claimed invention attempts to overcome, namely the fact that point of purchase products are not provided at automated checkout counters.

Regarding Claim 50, the Examiner states that *Terranova* discloses a prompt for items able to be dispensed at the fuel dispenser. See, Examiner’s Answer, page 10, lines 21-22. However, the disclosure cited by the Examiner merely indicates that another product may be purchased at the point of sale. See, *Terranova*, col. 8, line 66-col. 9, line 8. The disclosure of *Terranova* goes on to recite examples of how a car wash and/or a food order may be placed at the point of purchase of the fuel dispenser. One of ordinary skill in the art would immediately recognize, however, that these items are not “available at the point of purchase” as required, in part by independent Claim 50. Instead, one must travel to another location to have their car washed or to pick up their food order. In contrast, Appellants’ specification repeatedly discusses the benefit of having the product to be dispensed located proximate to the checkout area such that the product may be dispensed at the checkout area. See, e.g., specification at, for example, page 16, lines 1-19; page 17, lines 19-21. Because *Terranova*’s non-fuel product is not available at the point of purchase, *Terranova* fails to disclose each and every element of independent Claim 50.

Regarding Claims 56, 65, 76 and 106, the Examiner asserts that *Bustos* and *Terranova* stock a plurality of different products at the point of purchase. The Examiner also states that

“even if it were considered not disclosed, at the very least, it would be considered obvious to prompt the consumer [to] buy any number of items able to be dispensed by *Bustos*’ dispenser because the intent of *Bustos*’ dispenser is to sell items, and this would have been an obvious way of bringing such items to the attention of the customer for purchase.” See, Examiner’s Answer, page 11, lines 5-9. However, when read in the context of the remaining portions of, for example, Claim 56 or Appellants’ specification, it becomes clear that Appellants’ present invention is intended to store several products at one time in the point of purchase device. For example, Claim 56 reads, in part, “stocking a plurality of different products at the point of purchase; automatically prompting the consumer that the products are available at the point of purchase; automatically accepting an approval by the consumer to purchase at least one of the products.” Therefore, it is clear that the point of purchase device houses many different kinds of products and allows the consumer to choose which of the products he or she would like to purchase. In contrast, the disclosure (i.e., the figures) cited by the Examiner with respect to *Bustos* only shows one product to be dispensed. Moreover, due to the complex technology of the touch screen prompts and messages that would be necessary to be provided to the consumer with such a transaction, it would not have been obvious to one of ordinary skill in the art to modify *Bustos* or *Terranova* to provide such a prompt. See, also, the discussion above regarding Claims 48, 102, and 106-111 and the touch screen of the present invention.

Regarding Claims 106 and 109, the Examiner alleges that *Terranova* teaches advertising/prompting a customer to add a dispensable product to their purchase. See, Examiner’s Answer, page 11, lines 16-22. However, Appellants respectfully submit that although the Examiner alleges that advertising/prompting a customer is disclosed by *Terranova*, the Examiner fails to even address the remaining limitations for Claims 106 and 109. Therefore, even if the Examiner is correct in alleging that advertising/prompting a customer is disclosed by *Terranova*, the cited references still fail to disclose or suggest remaining limitations of the present claims. Moreover, as demonstrated above with respect to Claim 50, any product in *Terranova* is located at a remote location. See, *Terranova*, col. 8, line 64-col. 9, line 19. In contrast, the products offered to a consumer at the point of purchase of the present invention are located, i.e., stored, in the dispensing device proximate to the checkout area. See, also, the discussion of remote and proximate contained herein with respect to Claim 44.

With respect to Claim 110, the Examiner merely reiterates that it would have been obvious in light of both *Bustos* and *Terranova* to dispense any conceivable product that one ordinarily skilled in the art would consider customers would like to purchase in their dispensers so as to provide profit. See, Examiner's Answer, page 12, lines 1-4. However, as previously discussed with respect to Claims 56, 65, 76 and 106, *Bustos* discloses providing only one product at a time in a dispenser. In contrast, and as previously discussed, Appellants' present invention provides "stocking confectionary and non-consumable products in a single device," as required, in part, by Claim 110. The language of Claim 110 itself makes clear that a single point of purchase device of the present invention may provide more than one product to a consumer at one time. Because the point of purchase device must provide options to the consumer, the point of purchase device of the present invention requires a touch screen and prompt that is more complex than any screens or prompts disclosed in the cited references. See, e.g., the discussion above with respect to Claims 56, 65, 76 and 106.

Regarding Claims 62 and 64, Appellants maintain the position that *Terranova* fails to disclose each and every limitation of independent Claim 62 and dependent Claims 63-64 that dependent therefrom, as is discussed above in section II. Specifically, *Terranova* fails to disclose or suggest obtaining a fee from a supplier of the product in exchange for allowing the product to be dispensed from the point of purchase device as required, in part, by Claim 62. Moreover, *Bustos* and *Walter* also fail to disclose or suggest obtaining a fee from a supplier of the product in exchange for allowing the product to be dispensed from the point of purchase device as required, in part, by Claim 62. Therefore, because the cited references fail to disclose each and every limitation of Claims 62-64, Appellants respectfully submit that the cited references fail to render Claims 62-64 obvious.

For at least the reasons discussed above, the cited reference does not teach, suggest, or even disclose all of the elements of Claims 44-68, 76 and 102-111, and thus, fail to render the claimed subject matter obvious for at least these reasons. Therefore, Appellants respectfully submit that Claims 44-68, 76 and 102-111 are novel, nonobvious and distinguishable from the cited references and are in condition for allowance.

Accordingly, Appellants respectfully request that the obviousness rejection with respect to Claims 44-68, 76 and 102-111 be reconsidered and the rejection be withdrawn.

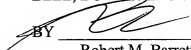
IV. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the Final Office Action. Therefore, Appellants respectfully request that the Board of Appeals reverse the anticipation rejections with respect to Claims 62-64 and the obviousness rejections with respect to Claims 44-68, 76, and 102-111.

No fee is due in connection with this Reply Brief. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112703-294 on the account statement.

Respectfully submitted,

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